

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #06	CCRB Case #: 202006197	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 09/12/2020 1:30 AM	Location of Incident: § 87(2)(b) [REDACTED]	18 Mo. SOL 5/4/2022	Precinct: 40
Date/Time CV Reported Sat, 09/12/2020 4:20 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 09/12/2020 4:20 PM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. Officers			
3. CPT Isaac Soberal	00000	943830	040 PCT
4. POM Paul Barth	15418	960208	040 PCT
5. POM Rashard Jones	18707	961842	040 PCT
6. POM Kelvin Winters	04788	961582	040 PCT
7. POM Brian Greaige	13811	960616	PSA 7
8. PO Christopher Garcia	09895	957614	PSA 7
9. PO Tyler Ubben	22865	947559	PSA 7
10. PO John Migliaccio	25698	964169	PSA 7
11. PO Matthew Miret	07813	961955	PSA 7
12. PO Randy Henriquez	08570	952842	040 PCT
13. PO Edison Taveras	23952	962833	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Melissa Davis	01781	950919	PSA 7
2. POM Jonathan Estevez	13679	965073	040 PCT
3. POM Sinaka Javorovac	31751	968515	040 PCT
4. POM Terrence Saunders	13806	962088	040 PCT
5. POM Justin Ludvick	04040	959771	040 PCT
6. SGT Randy Zerling	04434	937786	040 PCT
7. PO Damion Cunningham	03411	969034	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . Officers	Force: Officers used physical force against an individual.	
B . Officers	Force: Officers used physical force against § 87(2)(b)	
C . PO Edison Taveras	Force: Police Officer Edison Taveras used a non-lethal restraining device on § 87(2)(b)	
D . PO Matthew Miret	Force: Police Officer Matthew Miret used pepper spray against § 87(2)(b) § 87(2)(b) § 87(2)(b) and individuals.	
E . PO John Migliaccio	Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b) § 87(2)(b) § 87(2)(b) and individuals.	
F . PO John Migliaccio	Force: Police Officer John Migliaccio used physical force against an individual.	
G . POM Paul Barth	Abuse: Police Officer Paul Barth threatened an individual with the use of force.	
H . PO Tyler Ubben	Discourtesy: Police Officer Tyler Ubben spoke discourteously to an individual.	
I . PO Christopher Garcia	Discourtesy: Police Officer Christopher Garcia spoke discourteously to individuals.	
J . PO John Migliaccio	Discourtesy: Police Officer John Migliaccio spoke discourteously to Individuals.	
K . PO Randy Henriquez	Force: Police Officer Randy Henriquez used physical force against § 87(2)(b)	
L . PO Randy Henriquez	Discourtesy: Police Officer Randy Henriquez spoke discourteously to § 87(2)(b)	
M . CPT Isaac Soberal	Discourtesy: Captain Isaac Soberal spoke discourteously to § 87(2)(b)	
N . POM Kelvin Winters	Force: Police Officer Kelvin Winters used physical force against § 87(2)(b)	
O . POM Rashard Jones	Force: Police Officer Rashard Jones used physical force against § 87(2)(b)	
P . POM Brian Greaige	Force: Police Officer Brian Greaige used physical force against § 87(2)(b)	
Q . Officers	Force: Officers used physical force against § 87(2)(b)	
R . Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	
S . POM Paul Barth	Discourtesy: Police Officer Paul Barth spoke discourteously to § 87(2)(b)	
T . PO Matthew Miret	Abuse: Police Officer Matthew Miret threatened individuals with the use of force.	
U . PO Matthew Miret	Discourtesy: Police Officer Matthew Miret spoke discourteously to individuals.	
V . POM Rashard Jones	Abuse: Police Officer Rashard Jones threatened to arrest § 87(2)(b)	
W . An officer	Abuse: An officer threatened an individual with the use of force.	
X . POM Kelvin Winters	Abuse: Police Officer Kelvin Winters seized § 87(2)(b) property.	
§ 87(2)(g), § 87(4-b)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

### Case Summary

On September 12, 2020, § 87(2)(b) submitted this complaint via the CCRB Call Processing System. On September 12, 2020, § 87(2)(b) submitted this complaint with IAB. On September 28, 2020, it was received from IAB via Log § 87(2)(b). On February 10, 2021, Case § 87(2)(b) which pertained to the same incident, was subsumed into this case.

On September 12, 2020, at approximately 1:30 a.m., two individuals were shot, one killed, in the parking lot of § 87(2)(b) in the Bronx. Tens of officers, including Lt. Eric Dym, Sgt. Natalie Bautista, Sgt. Melissa Davis, PO Christopher Garcia, PO Brian Greage, PO Matthew Miret, PO John Migliaccio, and PO Tyler Ubben of PSA-7, and Captain Isaac Soberal, PO Rashard Jones PO Kelvin Winters, PO Edison Taveras, PO Paul Barth, and PO Randy Enriquez of the 40<sup>th</sup> Precinct, responded to the incident location. Tens of civilians, including § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) surrounded the area. Some civilians attempted to administer aid to the individuals who had been shot, interfering with the officers' own attempts to administer aid.

Sgt. Bautista told § 87(2)(b) to step away from the person who had been shot. He responded by throwing his hands at her and asking why officers were touching him. A group of approximately 15 officers grabbed § 87(2)(b) grappling to place him into handcuffs (**Allegation A: Force:** § 87(2)(g) § 87(2)(b)). Several civilians intervened in § 87(2)(b) arrest. Officers pulled § 87(2)(b) from the crowd and grappled to place him into handcuffs (**Allegation B: Force:** § 87(2)(g) § 87(2)(b)). § 87(2)(b) twisted out of the officers' grasps and tried to run away. PO Taveras deployed a Taser, striking the § 87(2)(b) in the chest (**Allegation C: Force:** § 87(2)(g) § 87(2)(b)). PO Miret and PO Migliaccio deployed O.C. pepper spray toward a crowd that included § 87(2)(b) § 87(2)(b) § 87(2)(b) and unknown individuals (**Allegation D: Force:** § 87(2)(g) § 87(2)(b)) (**Allegation E: Force:** § 87(2)(g) § 87(2)(b)). As officers continued to grapple with § 87(2)(b) PO Migliaccio punched him in the head multiple times (**Allegation F: Force:** § 87(2)(g) § 87(2)(b)). PO Barth pointed a Taser at § 87(2)(b) (**Allegation G: Abuse of Authority:** § 87(2)(g) § 87(2)(b)). An unknown black female yelled at PO Ubben and Sgt. Davis. As she walked away, PO Ubben said, "Fuck out of here. Savage" (**Allegation H: Discourtesy:** § 87(2)(g) § 87(2)(b)). PO Garcia yelled toward the crowd, "Fuck out of here," and "Get the fuck out of here" (**Allegation I: Discourtesy:** § 87(2)(g) § 87(2)(b)). PO Migliaccio yelled, "Fuck out of here" (**Allegation J: Discourtesy:** § 87(2)(g) § 87(2)(b)). PO Garcia told a group of individuals, "Yo. I fucking dare you. I dare you. Fuck out of here. Fuck you, bro" (**within Allegation I**).

§ 87(2)(b) saw his friend had been shot, and pushed past officers to try to administer aid. PO Henriquez pushed § 87(2)(b) away (**Allegation K: Force:** § 87(2)(g) § 87(2)(b)). PO Henriquez allegedly said, "Get the fuck out of here. Don't you see what the fuck?" "Get the fuck out of here," and "Get the fuck out of here" (**Allegation L: Discourtesy:** § 87(2)(g) § 87(2)(b)). Captain Soberal repeatedly told § 87(2)(b) to "Get the fuck out of here" (**Allegation M: Discourtesy:** § 87(2)(g) § 87(2)(b)). PO Winters shoved § 87(2)(b) (**Allegation N: Force:** § 87(2)(g) § 87(2)(b)). PO Jones grabbed § 87(2)(b) around the waist and swung him to the ground (**Allegation O: Force:** § 87(2)(g) § 87(2)(b)). PO Greage punched § 87(2)(b) in the face approximately five times and pushed his head against the concrete (**Allegation P: Force:** § 87(2)(g) § 87(2)(b)). Unknown officers allegedly crouched over § 87(2)(b) and continuously kneed, kicked, and punched him all over (**Allegation Q: Force:** § 87(2)(g) § 87(2)(b)). Officers said "fuck" while attempting to place § 87(2)(b) into handcuffs (**Allegation R: Discourtesy:** § 87(2)(g) § 87(2)(b)). As § 87(2)(b) was being escorted away, PO Barth yelled, "Shut the fuck up" (**Allegation S: Discourtesy:** § 87(2)(g) § 87(2)(b)). PO Miret approached an unknown female individual, pointed a canister of O.C. pepper spray at her face, and said, "Get the fuck out of here" (**Allegation T: Abuse of Authority:** § 87(2)(g) § 87(2)(b)) (**Allegation U: Discourtesy:** § 87(2)(g) § 87(2)(b)). An unknown male individual approached PO Miret, who pointed O.C. pepper spray at the man's face (**within Allegation T**). PO Miret approached a male and a female individual who were walking away from the crime scene. PO Miret pointed O.C. spray at them and said, "Get the fuck

out of here” (within Allegations T and U). As PO Jones and PO Winters escorted § 87(2)(b) to the police vehicle, PO Jones threatened to arrest § 87(2)(b) (Allegation V: Abuse of Authority: § 87(2)(g)). An unknown officer pointed a Taser at an unknown individual (Allegation W: Abuse of Authority: § 87(2)(g)). PO Winters allegedly seized § 87(2)(b) belt and failed to return it (Allegation X: Abuse of Authority: § 87(2)(g), § 87(4-b)).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was issued a summons for disorderly conduct. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

The investigation obtained 88 BWC videos (BR 01 - 88) and cell phone footage from § 87(2)(b) (BR 89 - 91).

### **Findings and Recommendations**

**Allegation A – Force: Officers used physical force against an individual.**

**Allegation B – Force: Officers used force against § 87(2)(b)**

**Allegation C – Force: Police Officer Edison Taveras used a non-lethal restraining device on § 87(2)(b)**

Sgt. Natalie Bautista of PSA-7 had BWC (BR 36), beginning at 0:00, that showed her respond to the scene of a shooting. Tens of officers gathered around a Ford SUV, and some administered aid to the two people who had been shot. An ambulance arrived. Tens of civilians and approximately 50 officers stood in the immediate vicinity of the people who had been shot. At 2:20, Sgt. Bautista stood approximately five feet from one of the individuals who had been shot. A black male individual, identified as § 87(2)(b) (last name unknown), approached her with his hands over his head and cried, “§ 87(2)(b) dying, bro.” Placing a hand on his shoulder, Sgt. Bautista told him to step back. § 87(2)(b) threw his hands out and screamed, “Why y’all keep touching me?” Sgt. Bautista repeatedly yelled that he hit her. A group of approximately fifteen officers grabbed § 87(2)(b) who braced his arms and attempted to remain standing. He yelled that he had not touched Sgt. Bautista. At least four other male individuals stood in the vicinity, blocking officers from grabbing § 87(2)(b). Officers struggled with § 87(2)(b) for approximately one and a half minutes, as he repeatedly fell the ground and then got back up. At 3:50, officers carried him away.

PO Taveras’ BWC (BR 24), beginning at 1:00, showed him respond to the scene of a shooting. Tens of officers gathered around a Ford SUV, and some administered aid to the two people who had been shot. Captain Soberal instructed officers to tape off a crime scene. Approximately 50 officers gathered around the people who had been shot. Beginning at 4:05, approximately 15 officers coalesced around § 87(2)(b) who Sgt. Bautista said hit her. A group of approximately six officers grabbed another black male individual (identified as § 87(2)(b) and tried to place him into handcuffs. As the officers held him, § 87(2)(b) braced his arms and stood in place for approximately 20 seconds. Suddenly, § 87(2)(b) pulled his arm out of one officers’ grasp, ducked between two other officers, and started to run away. An unknown officer reached out and grabbed § 87(2)(b) by the sweatshirt, pulling him backwards. PO Taveras pointed a Taser at § 87(2)(b) chest and deployed it. § 87(2)(b) fell to the ground and officers placed him into handcuffs. PO Taveras escorted § 87(2)(b) to the police vehicle. At 9:45, PO Taveras told another officer that he used the Taser against § 87(2)(b) who was going to be issued a summons for disorderly conduct. At 12:00, § 87(2)(b) said his name was § 87(2)(b).

Lt. Eric Dym of PSA-7 had BWC (BR 53), beginning at 0:30, that showed § 87(2)(b) yell “Why y’all keep touching me?” As approximately 15 officers attempted to grab § 87(2)(b) an unknown male in a sweatshirt hugged him and pushed him away from the officers. § 87(2)(b) denied touching § 87(2)(b).

Sgt. Bautista. Lt. Dym asked Sgt. Bautista if she wanted to take him, and she replied, “Yeah. He hit me. Yeah. He did.” The crowd of officers split into two different groups. One group carried § 87(2)(b) across the lawn. The other group stayed with § 87(2)(b) who officers grabbed and tried to place into handcuffs. At 1:38, PO Taveras was depicted with his Taser prongs attached to § 87(2)(b) chest. At 1:50, officers walked § 87(2)(b) away from Lt. Dym. An officer yelled, “Give us your hands.” A group of approximately ten officers around § 87(2)(b) tried to pull his hands behind his back. Lt. Dym yelled, “Take him to the ground.” Officers took § 87(2)(b) to the ground. Lt. Dym yelled, “Give up your hands § 87(2)(b) Lt. Dym said, “Cuff him up,” then walked away.

There were no civilian complaints regarding these three allegations.

Based on the BWC footage, the investigation was able to arrive at a disposition regarding this allegation. Consequently, PO Taveras was not interviewed.

A person is guilty of obstructing governmental administration (OGA) when he intentionally obstructs, impairs, or perverts the administration of law or prevents a public servant from performing an official function, by means of physical force or interference. New York Penal Law 195.05 (BR 92). A person is guilty of resisting arrest when he intentionally attempts to prevent a police officer from effecting an authorized arrest. New York Penal Law 205.30 (BR 93). Force may be used when it is reasonable to place a person into custody. Patrol Guide Procedure 221-01 (BR 94). A Taser should only be used against persons who are actively resisting or to prevent individuals from physically injuring themselves or others. A person is actively resisting when they use physically evasive movements to defeat a member of service’s attempt at control, including bracing or pushing. Patrol Guide Procedure 221-08 (BR 95).

BWC showed § 87(2)(b) stand next to a person who had been shot and throw his hands toward Sgt. Bautista when she told him to step back. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

BWC showed § 87(2)(b) bracing his arms, pushing officers, and trying to physically evade officers’ attempts to place him into handcuffs. Therefore, he was resisting arrest as per the Penal Law and “actively resisting” as defined by the Patrol Guide. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D – Force: PO Matthew Miret used pepper spray against § 87(2)(b) and individuals.**

**Allegation E – Force: Police Officer John Migliaccio used pepper spray against § 87(2)(b) and individuals.**

In the 88 BWC videos associated with this case, there were three arrests depicted. Aside from those three individuals resisting arrest by bracing their arms and legs, footage did not capture civilians fighting with officers. This footage did not capture supervisors instructing officers to use O.C. spray.

PO Miret’s BWC (BR 65), beginning at 0:00, showed him point O.C. pepper spray at a crowd of approximately ten people standing on the sidewalk. The crowd ran away.

PO Migliaccio's BWC (BR 63), beginning at 0:00, showed him run toward a crowd of civilians on a sidewalk. A group of officers was trying to handcuff an individual on the opposite side of a black fence. PO Migliaccio yelled at an individual to back up. The individual jumped back. PO Migliaccio yelled, "Start spraying them."

Lt. Dym's BWC (BR 53), beginning at 1:45, captured an unknown officer off screen yell, "If they don't back up just spray them."

§ 87(2)(b) testified that she stood next to the site of the shooting when an officer sprayed O.C. pepper spray directly into her face.

§ 87(2)(b) testified that as she stood outside of the parking lot, an officer sprayed O.C. pepper spray directly into her face. The spray appeared to be directed toward everyone on the crowd of approximately ten people.

§ 87(2)(b) testified that she heard gunshots then found one of the people who had been shot. Officers and EMTs arrived. An officer approached § 87(2)(b) and sprayed O.C. pepper spray approximately two feet from her face.

PO Miret testified that he did not remember this incident. However, based on his BWC footage, he believed that he deployed O.C. spray. He was trained to use O.C. spray, and also trained not to use O.C. spray on a crowd. He believed that his use of O.C. spray was permissible because it was against a "brawl" and not a "crowd." PO Miret used O.C. spray during this incident to secure the crime scene and to protect officers' safety, and because officers were under attack. There was no other reason he used O.C. spray. He was not aware of whether PO Migliaccio used O.C. spray.

PO Migliaccio testified that he used OC spray when supervisors instructed officers, including PO Migliaccio, to use OC spray. PO Migliaccio did not know who the supervisors were, but there were lieutenants and sergeants present. PO Migliaccio knew that officers were prohibited from using OC spray to disperse a crowd. However, he used OC spray specifically to prevent the crowd from interfering with arrests and with officers who were providing aid. He did not know how many times he used OC spray.

Officers are required to avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control. Members who are specifically trained in the use of O.C. spray for disorder control may use O.C. pepper spray in accordance with their training, and within Department Guidelines, and as directed by supervisors. Patrol Guide Procedure 221-07 (BR 96).

PO Miret testified that he used O.C. spray over a large area to prevent a "brawl" and because officers were under attack. However, extensive BWC footage did not depict civilians attacking officers. § 87(2)(g)

PO Migliaccio testified that he used O.C. spray because an unspecified supervisor told him to. However, because his BWC was activated midway through the incident, there was no audio of this moment. § 87(2)(g)

§ 87(2)(g)

**Allegation F – Force: Police Officer John Migliaccio used physical force against an individual.**

Sgt. Natalie Bautista's BWC (BR 36), beginning at 2:30, showed her yell that § 87(2)(b) hit her. A group of approximately ten officers grappled to place him into handcuffs. At 4:00, while approximately eight officers held § 87(2)(b) in place, an unknown officer put his hand on § 87(2)(b) neck and bent his head forward. PO Migliaccio stepped forward and punched § 87(2)(b) in the head three times.

PO Migliaccio's BWC (BR 63), showed him approach officers while they were still attempting to handcuff § 87(2)(b). PO Migliaccio stood next to § 87(2)(b) and his BWC quickly swung left and right. He walked away, and at 1:48, he said he thought he broke his thumb.

§ 87(2)(b) testified that approximately 12 officers converged around an individual then took him to the ground. Officers piled on top of him, and he kicked to get away from them. Officers kicked and punched him.

The investigation did not obtain a statement from § 87(2)(b).

PO Migliaccio testified that he remembered interacting with the individual depicted in his BWC but did not remember how. He did not remember if he used any hand strikes against him. Based on his own BWC footage, he could not tell whether he used any hand strikes.

In situations in which de-escalation is not safe or appropriate, no more than reasonable force will be used to gain control or custody of a subject. Force that is not reasonable is excessive force. In determining whether the use of force is reasonable, members of service should consider the following: 1) the nature and severity of the circumstances, 2) actions taken by the subject, 3) duration of the action, 4) immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders, 5) whether the subject is actively resisting custody, 6) whether the subject is attempting to evade arrest by flight, 7) the number of subjects in comparison to the number of MOS, 8) the size, age, and condition of the subject on comparison to the MOS, 9) subject's violent history, if known, 9) the presence of hostile crowd or agitators, 10) whether the subject is apparently under the influence of a stimulant or narcotics. Patrol Guide Procedure 221-01 (BR 94).

Although PO Migliaccio did not recall striking § 87(2)(b), BWC footage captured him doing so. During this incident, PO Migliaccio was present in the aftermath of a shooting, a large crowd was present, and § 87(2)(b) had been actively resisting arrest and struggling to get away from officers for several minutes. However, officers held § 87(2)(b) head in place before PO Migliaccio appeared to punch him in the head three times. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation G – Abuse of Authority: Police Officer Paul Barth threatened an individual with the use of force.**

PO Barth's BWC (BR 05), beginning at 2:55, showed approximately five officers grabbing § 87(2)(b) still struggling to restrain him as he fell to the ground. PO Barth approached them and pointed his Taser at § 87(2)(b) back. The officers continued to struggle to place § 87(2)(b) into



handcuffs. PO Barth walked away.

There was no civilian complaint regarding this allegation.

PO Barth testified that he pointed his Taser at § 87(2)(b) because, although he did not know what he was being arrested for, he could see that § 87(2)(b) was actively resisting and that officers were struggling to place him into handcuffs.

A Taser should only be used against persons who are actively resisting or to prevent individuals from physically injuring themselves or others. A person is actively resisting when they use physically evasive movements to defeat a member of service's attempt at control, including bracing or pushing. Patrol Guide Procedure 221-08 (BR 95).

The BWC footage showed § 87(2)(b) struggling against a group of approximately five officers, bracing his arms and preventing them from placing him into handcuffs. These actions constituted active resistance as defined by the Patrol Guide, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation H – Discourtesy: Police Officer Tyler Ubben spoke discourteously to an individual.**

PO Ubben's BWC (BR 55), beginning at 0:30, showed a black female individual walk past him, away from the crime scene. PO Ubben said, "Thank you. I really appreciate that." The black female yelled something back at him. PO Ubben said, "Fuck out of here. Savage." The black female did not seem to hear him. Another civilian stood approximately five feet away from him.

There was no civilian complaint regarding this allegation.

PO Ubben testified that as officers set up crime scene tape, a black female individual approached Sgt. Davis and was very irate. She pointed in Sgt. Davis' face and said the officers had not done their jobs correctly. She stormed away, breaking the crime scene tape in the process. When she was 10 to 15 feet away, PO Ubben said, "Get the fuck out of here," and, "Savage." He did not yell this statement towards her, and she had already walked out of earshot. He knew this was not an okay thing to say but said it because she said some disturbing things.

The NYPD mission includes a promise to treat every citizen with courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR 97). In Disciplinary Case #796247/04 (BR 98) the NYPD held that "when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer's verbal slip does not rise to the level of actionable misconduct."

PO Ubben said, "Get the fuck out of here. Savage," toward a civilian who was walking away from him. As he did not think the civilian could hear him, the investigation determined that it was not an attempt to maintain control of her. As another civilian was immediately next to PO Ubben, and he was in the middle of a crowded area, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation I – Discourtesy: Police Officer Christopher Garcia spoke discourteously to individuals.**

PO Garcia’s BWC (BR 54), beginning at 1:15, showed him run among the crowd after PO Migliaccio and PO Miret deployed O.C. spray. He looked toward the crowd and said, “Fuck out of here,” and, “That’s it. Go. Get the fuck out of here.” PO Garcia approached a group of black male individuals, one of whom was yelling. PO Garcia said, “Yo. I fucking dare you. I dare you. Fuck out of here. Fuck you, bro.”

PO Garcia testified that he used the word “fuck” in the heat of the moment because he wanted people to leave. He said, “I fucking dare you” because civilians were saying that they wanted to reenter the crime scene.

The NYPD mission includes a promise to treat every citizen with courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR 97). In Disciplinary Case #796247/04 (BR 98) the NYPD held that “when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer’s verbal slip does not rise to the level of actionable misconduct.”

PO Garcia first used the word “fuck” while issuing an instruction to leave. As he was clearing a crime scene in the aftermath of a shooting, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation J – Discourtesy: Police Officer John Migliaccio spoke discourteously to individuals.**

PO Migliaccio’s BWC (BR 63), beginning at 0:30, showed him yell, “Fuck out of here,” toward a crowd of civilians.

PO Migliaccio did not remember saying, “Fuck out of here.” He was presented with his BWC footage but did not hear himself make this statement.

The NYPD mission includes a promise to treat every citizen with courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR 97). In Disciplinary Case #796247/04 (BR 98) the NYPD held that “when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer’s verbal slip does not rise to the level of actionable misconduct.”

PO Migliaccio used the word “fuck” while issuing an instruction to leave. § 87(2)(b) he was clearing a crime scene in the aftermath of a shooting, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation K – Force: Police Officer Randy Henriquez used physical force against § 87(2)(b)**

§ 87(2)(b)

**Allegation L – Discourtesy: Police Officer Randy Henriquez spoke discourteously to § 87(2)(b)**

**Allegation M – Discourtesy: Captain Isaac Soberal spoke discourteously to § 87(2)(b)**

PO Henriquez's BWC (BR 34), beginning at 4:20, showed § 87(2)(b) walk within two to four feet of the man who had been shot. Officers attempted to administer aid. PO Henriquez grabbed § 87(2)(b) pushed him backwards, and repeatedly said, "Back up." He did not use the word, "Fuck."

Captain Soberal's BWC (BR 02), beginning at 8:10, showed § 87(2)(b) point his middle finger at an officer. Captain Soberal repeatedly said, "Get the fuck out of here."

§ 87(2)(b) testified that he saw his friend on the ground bleeding. He did not focus on anything other than his friend. He walked within two to four feet before PO Henriquez shoved him in the right shoulder, causing him to stumble backwards. PO Henriquez said, "Get the fuck out of here. Don't you see what the fuck?" § 87(2)(b) stepped away from the officers. PO Henriquez said, "Get the fuck out of here." Captain Soberal and PO Henriquez both said, "Get the fuck out of here." Captain Soberal said, "Fuck you" two times.

Force may be used when it is reasonable to ensure the safety of a member of service or a third person, or to otherwise protect life. Patrol Guide Procedure 221-01 (BR 94).

The NYPD mission includes a promise to treat every citizen with courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR 97). In Disciplinary Case #796247/04 (BR 98) the NYPD held that "when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer's verbal slip does not rise to the level of actionable misconduct."

Captain Soberal used the word "fuck" while issuing an instruction to leave. § 87(2)(b) he was clearing a crime scene in the aftermath of a shooting. § 87(2)(g)

As PO Henriquez pushed § 87(2)(b) away from a crime scene where officers were attempting to administer aid to a person who had been shot, § 87(2)(g)

§ 87(2)(g)

**Allegation N – Force: Police Officer Rashard Jones used physical force against § 87(2)(b)**

**Allegation O – Force: Police Officer Kelvin Winters used physical force against § 87(2)(b)**

**Allegation P – Force: Police Officer Brian Greaige used physical force against § 87(2)(b)**

Sgt. Davis' BWC (BR 01), beginning at 5:45, showed her approach § 87(2)(b) as he attempted to cross a police line of yellow tape. As PO Jones and PO Winters stood in front of her, Sgt. Davis pointed at § 87(2)(b) and repeatedly said, "Take him."

PO Estevez's BWC (BR 03), beginning at 5:35, showed PO Jones wrap his arms around § 87(2)(b) body and swing him to the ground. A group of approximately six officers grabbed § 87(2)(b) arms and legs. PO Greaige punched § 87(2)(b) in the head multiple times, then used his left hand to hold § 87(2)(b) head against the concrete. From that point forward, blood ran from § 87(2)(b) lip. PO Barth's BWC (BR 05) captured the same information at a different angle.

PO Miret's BWC (BR 65), beginning at 1:00, showed him approach § 87(2)(b) as officers were placing him into handcuffs. § 87(2)(b) said, "Your man punched me in my face for nothing, bro."

§ 87(2)(b) alleged that after Captain Soberal cursed at him, an unknown officer punched him in the face. His glasses were knocked askew, and he bled from his face. Another officer grabbed him, lifted him off the ground, and slammed him onto the ground chest-first. His glasses were knocked off. § 87(2)(b) believed his knee was fractured when he was slammed to the ground. He sustained a broken lip and a black eye as well.

§ 87(2)(b) did not see officers take § 87(2)(b) to the ground, but she saw a group of officers on top of him. § 87(2)(b) glasses were on the ground.

PO Jones testified that he observed § 87(2)(b) speaking to Captain Soberal and pushing past crime scene tape when § 87(2)(b) hiked up his pants and squared up in a fighting stance. PO Jones decided to arrest him for obstructing the crime scene. PO Jones grabbed § 87(2)(b) wrapped his arms around his torso, and pulled him to the ground. He did not observe any officers punch or strike § 87(2)(b).

PO Winters testified that after § 87(2)(b) spoke back and forth with Captain Soberal, § 87(2)(b) became very aggressive, balling up his fists and squaring up in a fighting stance. Captain Soberal directed PO Winters and PO Jones to arrest § 87(2)(b). PO Jones wrapped his hands around § 87(2)(b) and "slammed" or "dragged" him to the ground. PO Winters did not know PO Greaige and did not observe any officers punch § 87(2)(b) in the head.

PO Greaige did not recall this part of this incident. However, when presented with his BWC footage, he testified that he used a hand strike to overcome § 87(2)(b) resistance. He did not recall where his strike landed. He did not strike § 87(2)(b) after he stopped resisting.

PO Winters issued § 87(2)(b) a summons for disorderly conduct (BR 99) for refusing a lawful order to disperse.

On December 29, 2020, PO Jones and PO Winters prepared TRI reports (BR 100) regarding this incident. PO Jones' TRI noted that he used a forcible takedown to overcome active resistance. PO Winters' TRI noted that he wrestled and grappled with § 87(2)(b) to overcome active resistance. PO Greaige did not prepare a TRI report (BR 101).

In situations in which de-escalation is not safe or appropriate, no more than reasonable force will be used to gain control or custody of a subject. Force that is not reasonable is excessive force. In determining whether the use of force is reasonable, members of service should consider the following: 1) the nature and severity of the circumstances, 2) actions taken by the subject, 3) duration of the action, 4) immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders, 5) whether the subject is actively resisting custody, 6) whether the subject is attempting to evade arrest by flight, 7) the number of subjects in comparison to the number of MOS, 8) the size, age, and condition of the subject on comparison to the MOS, 9) subject's violent history, if known, 9) the presence of hostile crowd or agitators, 10) whether the subject is apparently under the influence of a stimulant or narcotics. Patrol Guide Procedure 221-01 (BR 94).

§ 87(2)(b) pushed through crime scene tape in the aftermath of a shooting and refused to disperse when asked. A large crowd was present, and based on the BWC footage, § 87(2)(b) actions distracted officers from attending to the shooting victims and securing a crime scene. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

In contrast, while PO Jones was already straddled over § 87(2)(b) and officers were leaning in to grab § 87(2)(b) arms and legs, PO Greaige punched § 87(2)(b) in the head multiple times and pushed his head into the concrete. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation Q – Force: Officers used force against § 87(2)(b)**

**Allegation R – Discourtesy: Officers spoke discourteously to § 87(2)(b)**

PO Barth's BWC (BR 05), beginning at 3:45, showed officers grab § 87(2)(b) arms and legs and pin him to the ground. PO Barth said, "Get the fuck on the floor." Another unknown officer said, "Lay the fuck down." Another unknown officer said, "Give me your fucking hands." § 87(2)(b) said he didn't do anything. Another unknown officer replied, "You don't fuckin' listen." One officer had their knee on § 87(2)(b) ankles. No other officer placed their knees on him. Officers did not punch or kick § 87(2)(b)

§ 87(2)(b) testified that after he was taken to the ground, unknown officers crouched around him and placed their knees all over his body, including his head. The officers continuously kned, kicked, and punched him all over. More than one officer punched him in the head. Other unknown officers kicked him. An officer who struck him said, "Fuck you up. You want to be a bad boy, right? You want to be a tough guy?"

The NYPD mission includes a promise to treat every citizen with courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR 97). In Disciplinary Case #796247/04 (BR 98) the NYPD held that "when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer's verbal slip does not rise to the level of actionable misconduct."

As stated in Allegation P, PO Greaige punched § 87(2)(b) in the head as PO Jones took him to the ground. BWC footage captured the rest of the arrest, as officers pinned § 87(2)(b) to the ground and placed him into handcuffs. Officers did not punch, kick, and kneel on § 87(2)(b) as alleged. § 87(2)(b) alleged that officers used the word "fuck" while handcuffing him. However, BWC footage showed that each use of the word "fuck" was amidst an instruction for § 87(2)(b) to comply. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)



**Allegation S – Discourtesy: Police Officer Paul Barth spoke discourteously to § 87(2)(b).**

PO Barth's BWC, beginning at 4:30, showed an unknown officer say, "Yeah you're sorry now." § 87(2)(b) replied, "I'm not sorry." As PO Miret escorted § 87(2)(b) away, PO Barth yelled, "Shut the fuck up."

PO Saunders' BWC, beginning at 4:40, showed PO Barth yell, "Shut the fuck up" at § 87(2)(b)

§ 87(2)(b) alleged that as he was being escorted away from the scene, an officer said, "Fuck him. Fuck that kid."

PO Barth testified, upon viewing his BWC footage, that he said "Shut the fuck up" to § 87(2)(b). He said this in the heat of the moment in the aftermath of a shooting. There was no other reason he made this statement.

The NYPD mission includes a promise to treat every citizen with courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR 97). In Disciplinary Case #796247/04 (BR 98) the NYPD held that "when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer's verbal slip does not rise to the level of actionable misconduct."

PO Barth told § 87(2)(b) to "shut the fuck up" after § 87(2)(b) had been handcuffed and was being escorted away from the crime scene. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation T – Abuse of Authority: Police Officer Matthew Miret threatened individuals with the use of force.**

**Allegation U – Discourtesy: Police Officer Matthew Miret spoke discourteously to individuals.**

PO Miret's BWC (BR 65), beginning at 2:50, showed PO Miret walk through a gate and onto a basketball court. He ran toward an unknown black female individual in a white sweater. She was on the phone. When PO Miret was immediately in front of her, he yelled, "Leave. Leave now. Now." PO Miret pointed a canister of O.C. spray at her head and said, "Get the fuck out of here." The unknown female walked away. PO Miret yelled, "Leave now. Now. Out. Now." PO Miret followed behind her and said, "Faster. Move. Move." PO Miret followed her and repeatedly told her to move. Once outside of the basketball court, an unknown male in a white shirt walked toward the officers and pointed to indicate that he was walking away from the crime scene. PO Miret pointed his O.C. spray at the unknown male, asked what he was doing, and told him to leave. The unknown male walked closer and said he was walking in the other direction. PO Miret pointed the O.C. spray in the unknown male's face. The unknown male walked away. PO Miret walked back to the basketball court. Officers told the people inside to leave. PO Miret approached an unknown male individual and an unknown female individual who were walking out of the court approximately 200 feet from where the shooting occurred. PO Miret said, "Time to leave. Now." The unknown female replied, "We heard him." PO Miret yelled, "Faster." He turned around toward the court, then turned back. He pulled out his O.C. spray and pointed it at the two unknown individuals from approximately six feet away, yelling, "Leave. Now." The two individuals turned around and walked away. PO Miret kept the O.C. spray pointed, and yelled, "Tell him to leave." The female individual said, "We heard

him.” PO Miret replied, “Get the fuck out here,” and walked away.

The CCRB did not receive civilian complaints regarding these two allegations.

PO Miret testified that he did not remember this incident. After being presented with this video, he stated that he told the black female in the white sweater to, “Get the fuck out of here,” because he was securing a crime scene and because she showed no motivation to leave while officers were moving toward her. He pointed his O.C. spray at the unknown male individual depicted at 3:36 into his BWC because generally, a lot of aggression had been taken out towards the police, and in that moment, he could not determine whether that aggression was going to issue. He pointed the O.C. spray for general officer safety and for no other reason. PO Miret pointed O.C. spray at the two individuals depicted at 4:22 in order to keep himself safe in case they became aggressive because they had already declined a police order to disperse.

O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of service, or other persons. O.C. pepper spray shall not be used in situations that do not require the use of physical force. Patrol Guide Procedure 221-07 (BR 96).

The NYPD mission includes a promise to treat every citizen with courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR 97). In Disciplinary Case #796247/04 (BR 98) the NYPD held that “when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer’s verbal slip does not rise to the level of actionable misconduct.”

Each time PO Miret used the word “fuck,” he did so while issuing an instruction to leave. § 87(2)(b) PO Miret was clearing a crime scene in the aftermath of a shooting, § 87(2)(g)

PO Miret pointed his O.C. spray at four unknown individuals, all of whom were over 100 feet from where the shooting took place. None of them were approaching the crime scene. The first individual was walking away from the crime scene. The second gestured to indicate that he was going in the other direction. The third and fourth individuals were walking away as well. PO Miret pointed his O.C. spray at each of them in case they became aggressive. § 87(2)(g)

§ 87(2)(g)

#### **Allegation V – Abuse of Authority: Police Officer Rashard Jones threatened to arrest**

§ 87(2)(b)

§ 87(2)(b) testified that she approached PO Jones and PO Winters and asked why they were arresting § 87(2)(b). They explained that § 87(2)(b) was not under arrest. § 87(2)(b) told the officers that § 87(2)(b) had not done anything. PO Winters started to walk away with § 87(2)(b) and PO Jones told § 87(2)(b) to back away and threatened to arrest her.

PO Jones testified that as he and PO Winters escorted § 87(2)(b) to their vehicle, two of § 87(2)(b) friends followed behind. They were very close, and PO Jones told them to get back. He did not remember what they looked like. It was possible that he told either of them that they could be arrested, but he did not specifically remember. If he had done so, it would have been because he was concerned that they were obstructing him as he was escorting a prisoner away.

PO Winters testified that as he and PO Jones escorted § 87(2)(b) to their police vehicle, § 87(2)(b) followed behind. PO Winters believed that § 87(2)(b) grabbed PO Jones, and that PO Jones replied that she would have to back up or else he would arrest her. She could have been arrested for OGA.

A person is guilty of OGA when he intentionally obstructs, impairs, or perverts the administration of law or prevents a public servant from performing an official function, by means of physical force or interference. New York Penal Law 195.05 (BR 92).

§ 87(2)(b) testified that while § 87(2)(b) was handcuffed, she approached PO Jones and PO Winters and asked why he was under arrest. PO Winters and PO Jones testified that she came too close, and that they were concerned she would obstruct them as they transported § 87(2)(b) to the stationhouse. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Allegation W – Abuse of Authority: An officer threatened an individual with the use of force.**

PO Cunningham's BWC (BR 19), beginning at 6:20, showed a black male individual standing in the crime scene, yelling at officers to get the person who had been shot off the ground. Officers stood in his way and told him to step back. A black female individual approached him and told him to go. He leaned against a vehicle and did not leave. A black male officer wearing a white mask approached, grabbed him by the shoulder, and told him to leave. The black male individual pulled his arms back and repeatedly said, "Don't touch me." The black male officer pulled out a Taser, pointed it at the black male individual, and said, "It's not worth it." The black male walked away.

The investigation did not receive a civilian complaint regarding this allegation.

According to the UF-49 (BR 102), and EVENT (BR 103), officers from the 40<sup>th</sup> Precinct, Bronx Detective Squad, PSA-7, Patrol Borough Bronx, and SRG 2 responded to this incident.

Further, § 87(2)(b) is across the street from the 44<sup>th</sup> Precinct, and one block from the 42<sup>nd</sup> Precinct (BR 104).

Given the vast number of officers who may have responded to this incident, and the fact that the officer in PO Cunningham's video was wearing a mask, the investigation was unable to determine who he was.

§ 87(2)(g)

#### **Allegation X – Abuse of Authority: Police Officer Kelvin Winters seized § 87(2)(b)**



**property.**

PO Winters' BWC (BR 09), beginning at 13:25, showed him lodging § 87(2)(b) in the 40<sup>th</sup> Precinct stationhouse cells. PO Winters took off § 87(2)(b) belt, placed him in the cells, then turned off his BWC.

§ 87(2)(b) testified that after this incident, he returned to the 40<sup>th</sup> Precinct stationhouse to retrieve his belt. Upon arrival, he was told that it had not been kept for safekeeping.

PO Winters testified that § 87(2)(b) property, including his belt, would have been returned after he was issued his summons. It would not have been vouchered because he was issued a summons. PO Winters was never made aware of an allegation that § 87(2)(b) belt was not returned to him.

PO Jones testified that he had no recollection of officers taking § 87(2)(b) belt. Normally, it would have been provided to him as he left the stationhouse.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- § 87(2)(b) has been a party to two prior CCRB complaints and was not named as a victim in either.
- PO Taveras has been a member of service for five years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Miret has been a member of service for five years and has been a subject in eight CCRB complaints and 26 allegations, of which one was substantiated.
  - Case #202001754 involved a substantiated strip search allegation against PO Miret. The Board recommended Charges and the NYPD has not yet imposed discipline. § 87(2)(g)
- PO Migliaccio has been a member of service for four years and has been a subject in ten CCRB complaints and 33 allegations, of which eight were substantiated.
  - Case #202001754 involved two substantiated discourtesy allegations against PO Migliaccio. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.
  - § 87(2)(g)
  - Case #202100606 involved four substantiated allegations of Force (Pepper Spray) against PO Migliaccio. The Board recommended Charges and the NYPD has not yet imposed discipline.
- PO Barth has been a member of service for six years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Ubben has been a member of service for 13 years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Garcia has been a member of service for seven years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Henriquez has been a member of service for nine years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- Captain Soberal has been a member of service for 15 years and has been a subject in five CCRB complaints and nine allegations, of which one was substantiated.
  - § 87(2)(g)
- PO Jones has been a member of service for five years and has been a subject in one CCRB complaint and seven allegations, none of which were substantiated. § 87(2)(g)
- PO Winters has been a member of service for five years and has been a subject in one CCRB complaint and four allegations, none of which were substantiated. § 87(2)(g)
- PO Greaige has been a member of service for six years and has been a subject in seven CCRB complaints and 28 allegations, of which one was substantiated.
  - Case #201905840 involved a substantiated Force allegation against PO Greaige. The Board recommended Command Discipline A and the NYPD imposed

### Command Discipline A.

## Mediation, Civil, and Criminal Histories

- § 87(2)(b) filed a Notice of Claim with the City of New York claiming conscious pain and suffering, mental, physical and emotional injuries and anguish, psychological and mental distress, loss of liberty, loss and/or deprivation of civil rights, punitive damages, economic damages, lost wages, and attorneys' fees, and seeking an amount to be set at trial as redress (BR 107).
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming conscious pain and suffering, mental and emotional injuries and anguish, psychological and mental distress, loss of liberty, loss and/or deprivation of civil rights, punitive damages, and attorneys' fees, and seeking an amount to be set at trial as redress (BR 108).
- § 87(2)(b) filed a Notice of claim with the City of New York claiming conscious pain and suffering, mental and emotional injuries and anguish, psychological and mental distress, loss of liberty, loss and/or deprivation of civil rights, punitive damages, economic damages, and attorneys' fees, and seeking an amount to be set at trial as redress (BR 109).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad: 6

Investigator:	<u>SI Muir</u>	<u>Supervising Investigator Muir</u>	<u>03.19.22</u>
	Signature	Print Title & Name	Date

Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

_____ Signature	_____ Print Title & Name	_____ Date
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